



POLICE DEPARTMENT

March 06, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Alejandr Vargas  
Tax Registry No. 921829  
Bronx Court Section  
Disciplinary Case No. 2011 4721  
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The above-named member of the Department appeared before me on January 19, 2012, March 2, 2012 and November 21, 2012, charged with the following:

1. Said Police Officer Alejandr Vargas, while assigned to PSA 3, on or about March 25, 2010, after being notified of a post change direciting [sic] her to report to the outdoor range, did fail to do so.

P.G. 206-03 MISCONDUCT SUBJECT TO A COMMAND DISCIPLINE

2. Said Police Officer Alejandr Vargas, while assigned to PSA 3, on or about June 30, 2010, was discourteous to Senior Police Administrative Aide Diane Carter, to wit: said Police Officer threw a court notification on her desk while stating in sum and substance: "I don't have time for this."

P.G. 203-09, Page 1, Paragraph 2 GENERAL REGULATIONS

3. Said Police Officer Alejandr Vargas, while assigned to PSA 3, on or about July 1, 2010, was discourteous to Principle [sic] Administrative Associate Manzoor Alli to wit: when Principle [sic] Administrative Associate Allli [sic] handed Police Officer Vargas a court notification, said Police Officer said in an elevated voice, "I'm end of tour, I don't have anything to do with this. Don't give me other people's work to do."

P. G. 203 09, Page 1, Paragraph 2 – GENERAL REGULATIONS

4. Said Police Officer Alejandr Vargas, while assigned to PSA 3, on or about November 19, 2010, failed to wear the prescribed uniform, to wit, said Police Officer failed to wear her uniform hat while on duty, as required. (*As amended*)

P.G. 204-01, Page 1, Paragraph 7    GENERAL UNIFORM REGULATIONS

5. Said Police Officer Alejandr Vargas, while assigned to PSA 3, on or about December 26, 2010, failed to properly voucher several items located within a vehicle she took into police custody, as required. (*As amended*)

P.G. 218-13, Page 1, Paragraph 1 – INVENTORY SEARCHES OF  
AUTOMOBILES AND OTHER PROPERTY

6. Said Police Officer Alejandr Vargas, while assigned to PSA 3, on or about February 19, 2011, did fail to observe and report damage to her assigned RMP in a timely fashion, to wit: said Police Officer began her tour at 2315 hours and did not report damage to her RMP until 0253 hours, and failed to note damage in her Activity Log, as required.

P.G. 219-01, Page 1, Paragraph 4 and 5    INSPECTION OF DEPARTMENT  
VEHICLES EACH TOUR BY  
OPERATOR

7. Said Police Officer Alejandr Vargas, while assigned to PSA 3, on or about February 26, 2011, was discourteous to Sergeant Eric Medina, to wit: said Police Officer Vargas told him, in sum and substance: “STOP HARASSING ME. MIND YOUR OWN BUSINESS. YOU'RE ACTING LIKE A JACKASS.”

P. G. 203-09, Page 1, Paragraph 2    GENERAL REGULATIONS

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Eric Sanders, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1. Respondent is found Guilty of Specification Nos. 2 through 7.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant William Beneventano, Police Administrative Aide Tracie Scott, Senior Police Administrative Aide Diane Carter, Principal Administrative Associate Manzoor Alli, Police Officer Roben Kikirov, Police Officer Daniel Deroia, Sergeant Robert Mosca, Sergeant Michael Curry, Police Officer Jasmine Mulero, Sergeant Eric Medina, and Sergeant Kurt Duncan as witnesses.

Lieutenant William Beneventano

Beneventano, a 13-year member of the Department who is assigned to Police Service Area (PSA) 3, recalled that on March 24, 2010, after he was informed that Respondent was overdue to receive a new protective vest, he prepared a post change notification. Beneventano confirmed that he did not write on the notification that the post change to the range was to occur on March 25, 2010 [Department's Exhibit (DX) 1 is a copy of the notification. Beneventano wrote "0600 hrs to Outdoor Range" and "P/C (post change) to Outdoor Range for P/U (pick up) of new vest."]. Beneventano asserted that he did not need to write on the notification that the post change to the range was to take place on March 25, 2010, because anytime that a police officer receives a post change it is understood that the change is for that same day. He stapled the notification to the midnight tour roll call. Beneventano had signed out end of tour and left the command before Respondent started her midnight tour at 1115 hours on March 24, 2010.

The next day, Beneventano examined the command log and saw no post change entry for Respondent in the log. He learned from the midnight tour supervisors, Sergeant Michael Curry and Lieutenant Platt that Respondent had not reported to the Outdoor Range. Platt told him that due to the absence of a date on the notification, Platt did not know what day Respondent was supposed to report to the range. Platt also told him that Respondent had stated that she did not have to go to the range.

Respondent never tried to contact Beneventano regarding the notification and Beneventano never asked Respondent why she had not reported to the range on March 25, 2010. He explained that he did not ask Respondent because the month before, Respondent had become "a bit confrontational" when he approached her regarding a notification about a summons book that was signed out. He asserted that he did not believe it was necessary for him to ask Respondent why she had not reported to the range on March 25, 2010, because "there was really nothing else to discuss" since "both of her supervisors had told me she hadn't gone and she had given her lieutenant the reason of I didn't put the date on the notification as the reason why she didn't respond."

Beneventano was subsequently informed by Principal Administrative Associate Manzoor Alli that Respondent had been discourteous to him on July 1, 2010.

Beneventano did not discuss this incident with Respondent because of her history of becoming confrontational. Beneventano issued Respondent two Command Disciplines. One for failing to report to the Outdoor Range March 25, 2010, and, based on Alli's credible allegation, one for the July 1, 2010 incident. These CDs were not adjudicated.

On cross-examination, Beneventano confirmed that he never asked Respondent if she had reported to the range on March 26, 2010. He conceded that if Respondent was

confused about whether she was supposed to report to the range on March 25, 2010, it would have been correct for her to go there the following day. When Respondent signed the notification (DX 1), she wrote on the document, "Already attended." Beneventano never asked her what she meant by that.

Beneventano confirmed that Alli's allegation that Respondent had been discourteous to him and another civilian employee on July 1, 2010, involved a letter that Respondent had directly received from the Department of Motor Vehicles (DMV) requesting that she appear at a hearing regarding a police action she had taken while on duty. Beneventano agreed that although DMV routinely sends such letters directly to officers, this not the proper way for an outside agency to notify an officer that her appearance is required at a hearing. The appropriate way for DMV to make such a notification is through Appearance Control so that roll call personnel can make the notification to the officer. The incident between Respondent and Alli occurred when Respondent brought the DMV letter to the roll call office to inform them that the scheduled appearance date fell on her regularly scheduled day off.

On redirect examination, Beneventano confirmed that Respondent did not tell her supervisors that she had previously gone to the range.

Police Administrative Aide Tracie Scott

Scott, who is assigned to the PSA 3 roll call office, testified that on June 30, 2010, Respondent entered the roll call office and told her that she needed to "change a date." Respondent showed Scott an envelope from DMV which had been mailed to Respondent's personal residence. Respondent told Scott that the envelope contained a

letter that was “something about traffic court and it was on her RDO.” When Scott asked if it was a personal matter or an official police matter, Respondent “sucked her teeth.”

Scott advised her to speak with Senior Police Administrative Aide Diane Carter who was seated next to Scott and who was talking on the telephone at the time. Scott saw Respondent fling the envelope onto Carter’s desk which landed in a tray on Carter’s desk. Respondent then said, “I don’t have time for this shit,” and left the room. Scott did not see her again that day.

The next day, July 1, 2010, Carter asked Scott to return the envelope to Respondent. Because Scott did not want to “engage in anything with her,” Scott handed the envelope to Alli who agreed to return the envelope to Respondent. The June 30, 2010, incident was the only time that Scott ever had such an encounter with Respondent.

On cross-examination, Scott confirmed that she did not know that the DMV envelope Respondent showed her contained a letter requesting Respondent’s appearance at a hearing regarding action she took as a police officer. Scott agreed that such a DMV appearance notification should have been mailed to the command so that roll call could notify Respondent and that it is appropriate for an officer to ask roll call personnel to change court appearance dates that fall on regularly scheduled days off. Scott agreed that it was not the flinging of the envelope that she found unusual, but rather Respondent’s profane statement.

On redirect examination, Scott recalled that when Respondent made her statement she had been waiting for Carter to end her telephone conversation for less than a minute. If Respondent had told her that the DMV letter involved Department business, Scott would have called the DMV to find out why it had not been sent to the command. Scott

referred Respondent to Carter, the roll call supervisor, because it seemed to her that Respondent was becoming agitated.

Senior Police Administrative Aide Diane Carter

Carter, a 32-year member of the Department who has been assigned as the roll call supervisor at PSA 3 since 2000, recalled that at about 0800 hours on June 30, 2010, Respondent approached Carter's desk with her hands on her hips. Carter was on the telephone talking to another officer. After waiting about 20 seconds, Respondent threw an envelope on her desk, stated, "I don't have time for this shit," and walked away. Carter looked at the envelope after she finished her phone call and saw that it had Respondent's name and a home address written on it. Carter never opened the envelope. Carter gave it to Alli. Carter testified that Respondent made her feel disrespected as both a supervisor and a person. She reported the incident to Alli and Beneventano. She had never had any similar incident with Respondent.

On cross-examination, Carter confirmed that at her official Department interview she had quoted Respondent as only saying, "I don't have time for this." Carter explained that although Respondent had uttered the word "shit," Carter purposely left the word "shit" out of this sentence because she does not "like to tell anybody...that kind of thing."

Principal Administrative Associate Manzoor Alli

Alli, a 31-year member of the Department who has been assigned to PSA 3 since 2003, recalled that on July 1, 2010, he approached Respondent with the envelope that she had left on Carter's desk the day before. Alli had not opened the envelope. He asked

Respondent to take it from him since it was addressed to her. Respondent replied, "It's not my job, it's your job. It's the job of roll call. Let them do that." Alli left the envelope with Respondent and walked away. He did not want to say anything else to her because she was speaking loudly and there were other people in the area. The encounter took place near the front desk and there were police officers and a sergeant present. The encounter embarrassed Alli. Prior to that day, Respondent had always been cordial and respectful with Alli. Alli subsequently informed Beneventano about the incident because he was not happy with the way that Respondent had spoken to him.

On cross-examination, Alli testified that he was not present with Carter and Scott when Respondent entered the roll call office on June 30, 2010. Carter told Alli that Respondent had been rude to her, but Carter did not tell Alli that Respondent had used the word "shit." Alli confirmed that although roll call personnel regularly had difficulties satisfying officers' scheduling requests, it was rare for these situations to become disagreements, although disagreements did occur once in a while, these disagreements did not result in charges and specifications. Alli agreed that Carter has a loud voice and that Carter rolls her eyes and shifts her body and leans into people while she is talking. Alli never read the document that was inside the envelope because it was addressed to Respondent's residence. If Alli had known that the document pertained to an arrest that Respondent made, the document would have been handled by roll call personnel.

Police Officer Roben Kikirov

Kikirov, a seven-year member of the Department who is currently assigned to PSA 6, was assigned to PSA 3 between 2006 and 2011. He was on duty as Respondent's



partner on December 26, 2010, when they stopped a Cadillac for making an illegal turn. The driver had an open warrant and fled when the officers approached to arrest him. Respondent drove the Cadillac back to the command where Kikirov and Respondent searched the vehicle, recovering several items including compact discs. Kikirov typed up two vouchers for the property and showed them to Respondent to confirm that the vouchers were accurate. He asked Respondent to go back to the car to see if there was anything else that needed to be vouchered. Neither Kikirov nor Respondent discovered any additional items during a second inspection of the vehicle. Respondent agreed to take responsibility for filing the Property Clerk Invoice [DX 2 is a copy of the Property Clerk Invoice, dated December 26, 2010 and signed by Respondent. 14 items are listed on the invoice.]

In late January 2011, Respondent told Kikirov that she might have caused him to receive a CD because there were items inside the car that they had neglected to voucher. Kikirov pointed out to Respondent that she had been responsible for finalizing the vouchers. Kikirov subsequently received a CD for improper vouchering. He signed the CD and agreed to forfeit three vacation days.

On cross-examination, Kikirov testified that a supervisor informed him in February 2011 that he would be receiving a CD. He did not actually receive the CD until January 19, 2012. On December 26, 2010, he was the operator of the Department vehicle and Respondent was the recorder. Kikirov confirmed that he and Respondent had searched the Cadillac together and that they agreed that there was nothing else in the vehicle that needed to be vouchered. It was the first time that Kikirov had ever

vouchered a vehicle. When Respondent told him that there was nothing left to voucher, he trusted her judgment because she was senior to him.

Police Officer Daniel Deroia

Deroia, a 12-year member of the Department who is assigned to PSA 3, testified that as the property officer for the command he is responsible for the intake of property and bringing it to the warehouse. On December 27, 2010, when he inspected the Cadillac that Respondent had vouchered the previous day, he noticed property inside the car that should have been removed. He found clothing in the backseat and he found personal items, such as cologne and compact discs in the armrest of the center console which should have been listed on the voucher that was signed by Respondent. Because the Pound will not accept a vehicle when there are items that have not been accounted for, Deroia informed Respondent that there were still items inside the car that needed to be vouchered. When Respondent told Deroia that Kikirov had prepared the vouchers, Deroia pointed out that she was responsible because she had signed the Property Clerk Invoice.

A few days later, when the property Deroia had observed inside the car had still not been vouchered, Deroia brought this matter to the attention of Beneventano. Beneventano advised Deroia to give Respondent a written notification instructing her to voucher the property that still remained in the car. [DX 3 is a copy of the notification, stating that the voucher and the complaint report needed to be edited as additional vehicle information needed to be added. Respondent received the notification on January 4, 2011.] Because Respondent never vouchered the property that remained in the car,

Deroia personally vouchered the property on January 12, 2011. [DX 4 is a copy of Property Clerk Invoices that Deroia prepared on January 12, 2011. He listed 35 items.]

On cross-examination, Deroia confirmed that this was not the only occasion on which officers had left personal property inside a vehicle. Deroia confirmed that the reason that he personally vouchered the property remaining in the Cadillac was because the car needed to be taken to the Pound. He explained that he generally does not like to do this because he is not familiar with the circumstances regarding the seizure of a particular vehicle. No one ever informed him that Respondent would be receiving a CD for failing to voucher the property.

Sergeant Robert Mosca

Mosca, a 7-year member of the Department, is currently assigned to PSA 3. At approximately 2:50 a.m. on February 19, 2011, he received a telephone call from Respondent informing him that there was damage to the Department vehicle that she had taken possession of at approximately 11:45 p.m. the previous day and been operating that tour. When she brought the car back to the command, she pointed out to Mosca that the passenger side view mirror was damaged. Mosca testified that Respondent at the beginning of her tour should have documented this damage in her Activity Log as part of her inspection of the car. When he reviewed Respondent's Activity Log at approximately 3:00 a.m., he found an entry regarding a vehicle inspection documenting scratches and dents to the car, but he did not find anything about the damage to the mirror. He did not discuss with Respondent why there was nothing written about the mirror. Mosca did not believe Respondent was responsible for the damage.

On February 26, 2011, Mosca observed what seemed to be a verbal altercation between Respondent and another supervisor. Mosca was standing at the desk at the time when he saw Respondent holding the roll call in her hands to sign out at end of tour. When Sergeant Eric Medina approached Respondent and asked if she needed assistance with anything, Respondent replied, "When is it that you ever asked me for help?" When Medina told Respondent that he was just "trying to be a nice guy," Respondent told him, "Don't be a smart ass." At that point, Mosca pulled Respondent aside and told her that he was upset and embarrassed that she would use that tone with Medina. Respondent did not say anything in response. The encounter between Respondent and Medina occurred at the desk, near the back door of the command, where officers sign out at the end of tour. Respondent and Medina were standing two or three feet apart from each other at the time, and Mosca was standing in between them.

Respondent went downstairs to change out of uniform. When she came back upstairs, Mosca heard Medina tell Respondent that they should talk. Respondent replied to him with something along the lines of, "Are you going to sign my overtime slip in regard to this?" At that point, Mosca again intervened, taking Respondent outside and asking her why she was behaving in that manner. Respondent informed him that she had had prior incidents with Medina and that Medina had been harassing her.

On cross-examination, Mosca confirmed that he was present for the entire encounter between Respondent and Medina. He described Medina as non-confrontational, not at all sarcastic, and the type of person who "wouldn't pick a fight with anybody." Mosca conceded that because he was new to the command and had worked with Respondent and Medina for only about a month, it was possible that they

were jesting with each other and that he mistook their verbal exchange as Respondent being intentionally disrespectful to a supervisor.

Mosca confirmed that the mirror was affixed to the car with duct tape which appeared to have been placed on the mirror during an earlier tour. Mosca did not question the officers who used the car during the previous tour. He reiterated that he did not believe Respondent had caused the damage and that her only misconduct was her failure to document the damage in her Activity Log. He recalled that the car had other damage, including a driver's side headlight that was not functioning. Mosca agreed that the Patrol Guide requires the patrol supervisor to "supervise inspection of Department vehicles assigned to members of the platoon." Mosca confirmed that at the start of tour that day, he did not inspect the car that Respondent was assigned. He conceded that had he inspected it, he might have discovered the damage to the mirror and that if he had inspected the Activity Logs of the officers who were assigned the car on previous tours he might have discovered that these officers had also failed to document the damage.

On redirect examination, Mosca testified that during Respondent's verbal exchange with Medina on February 26, 2011, there were many people nearby, since Respondent's exchange with Medina took place in between tours and there were people coming and going. Mosca described Respondent as directing "a snide remark" at Medina and he could not understand "why she would take it to that level." She spoke in a regular tone of voice.

On recross-examination, Mosca confirmed that Medina did not yell at Respondent or reprimand her. In Mosca's opinion, the incident should never have occurred.

Sergeant Michael Curry

Curry, a 12-year member of the Department, is currently assigned to PSA 3. When working as desk officer, he is responsible for assigning notifications to officers. He explained that notifications are attached to the roll call and entered on a Master Notification Sheet. The notifications are typically handed out to officers at the start of tour before they go out on patrol. The officers sign the notifications and submit them to the desk officer. At that point, the desk officer signs the Master Notification Sheet. Curry's signature on the Master Notification Sheet from March 25, 2010, indicates that Respondent received a notification and returned a copy to the desk on that day. [DX 5 is a copy of the Master Notification Sheet showing that Respondent was given a notification to report to the Outdoor Range.]

While at work on February 26, 2011, Curry overheard an exchange that took place between Respondent and Medina. Although they were all in the desk area at the time, Curry could not hear the content of the first part of their conversation. During the second part of the conversation, Curry heard Medina approach Respondent and ask to speak with her. Respondent replied that she was going home unless he paid her overtime. At that point, Respondent walked out the door and Mosca followed her outside. Curry recalled that Medina was neither combative nor confrontational during the exchange. He described Respondent's demeanor as rude and confrontational. During the encounter, there were several officers in the vicinity of the desk area.

On cross-examination, Curry testified that he did not know if the Master Notification Sheet was an official Department document or something that was created specifically to be used at PSA 3. While Department documents typically have a "PD

number,” the Master Notification Sheet does not have one of these numbers on it. Curry did not know who gave the notification to Respondent on March 25, 2010. Upon review of the notification, Curry noted that Respondent signed the slip, but there was not a supervisor’s signature on it. According to Department policy, the supervisor who makes the notification is supposed to sign the document. Although Curry could not remember if he had personally served Respondent with the notification, he was certain that Respondent had received it at some point that day because he signed the Master Notification Sheet only after Respondent signed the slip and returned it to the desk. He recognized the signature on the notification as Respondent’s signature.

Curry supervised Respondent for over two years. As far as he was aware, Respondent never made any complaints against him. Curry was not aware of Respondent making Activity Log entries with respect to their interaction.

Curry could not recall what his assignment was on February 26, 2011. Medina told Curry that when he had asked Respondent what she was doing by the roll call, she called him a “jackass.” Curry agreed that he did not personally hear Respondent call Medina a “jackass.” Curry did hear Respondent later tell Medina, “I am off-duty. I’m going home. I don’t want to speak to you.” Curry confirmed that Respondent was in fact off-duty at that point and he agreed that there is nothing wrong with an officer leaving to go home when she is off-duty. Curry recalled that Medina was upset after the incident but Medina did not call the duty captain or the platoon commander about the encounter. Curry did not know how long Respondent and Medina had known each other. Curry conceded that it was possible that a supervisor might have a joking-type relationship with one officer but not with other officers.

Police Officer Jasmine Mulero

Mulero, a six-year member of the Department who is assigned to PSA 3, recalled that on July 1, 2010, she was inside PSA 3 in the vicinity of the front desk when she observed Alli, who appeared calm, approach Respondent. After he gave her "notification in regards to some phone calls that she had to make," Mulero heard Respondent, whose voice was "a little up," tell Alli, in a "harsh" and "sarcastic" manner, "not to give her his work, or the work of the people in the back to do," and that he should "do his own work." Alli did not say anything in response and left the area. The entire encounter lasted a couple of seconds.

Mulero was again at the desk on February 26, 2011, when she observed Respondent looking at the roll call for a couple of minutes. When Medina approached and asked for the roll call, Respondent asked him why he was harassing her. Medina explained to Respondent that he wanted the roll call because he did not want it to get lost. At that point, Respondent asked Medina if he was accusing her of stealing. When Medina explained to Respondent that he was just concerned about the roll call because it sometimes fell on the floor and got stepped on, Respondent replied, "You're just being a jackass." Respondent then went downstairs. Nobody else was present at the desk during the encounter. When Respondent returned upstairs, Medina calmly asked to speak with her. Respondent sarcastically told him that she was end of tour and that she was leaving unless he paid her overtime.

On cross examination, Mulero testified that she was assigned as the Telephone Switchboard Operator on July 1, 2010. She did not know what document Alli handed



Respondent that day, but Alli said that it was a notification. In Mulero's opinion, Respondent acted rudely. Alli did not seem angry about the encounter, and Mulero did not see him discipline Respondent in any way. Mulero did not know the nature of Respondent's relationship with Alli.

Mulero agreed that it is not unusual for a police officer to look at the roll call. When Medina approached Respondent on February 26, 2011, he asked Respondent if he could help her. In Mulero's opinion, Respondent's tone was harsh and sarcastic when she called Medina a jackass. Medina did not react in any way. Mulero is Medina's driver, and she has jokingly cursed at him. According to Mulero, officers and sergeants regularly curse in conversation with each other.

#### Sergeant Eric Medina

Medina, a 14-year member of the Department who has been assigned to PSA 3 for five years, recalled that at about 7:50 a.m. on February 26, 2011, he was assigned as the desk officer when he observed Respondent looking through the roll call. He thought that this was unusual because MOS who look at the roll call normally just sign out; they do not flip back and forth between pages like Respondent was doing. Medina thought that Respondent might need assistance with something.

After Respondent had flipped through the roll call for a minute or two, Medina asked her if she needed any help. Respondent replied that he should mind his own business. Medina described Respondent's tone as "a little bit hostile, foul, a little bit insubordinate." He was surprised by this, as Respondent had never previously spoken to him in that manner.

Because Medina was caught off guard, he did not immediately respond to her remark. Respondent then asked him, "Since when do I need your help signing out?" At that point, he approached her and attempted to explain to her his responsibilities as the Desk Officer with regard to the roll call. Respondent accused him of harassing her. Medina recalled that he replied, "Who's harassing you? Is anybody harassing you?" Respondent then told Medina that he was "acting like a jackass." Medina walked away because the encounter had become confrontational and he did not want to escalate the situation.

Based on the tone of Respondent's voice, Medina did not believe that she was joking around. Medina felt embarrassed and humiliated because Respondent had "conducted herself with insubordination in front of my subordinates and my peers, and the vulgarity that was expressed in front of others." Mosca and Mulero were present during the incident. Other MOS were also present, but Medina could not recall specifically who they were. Medina wanted to resolve the matter before Respondent left for the day, but Respondent told him that she would not stay unless he paid her overtime. She told him, "I'll talk to you tomorrow if you are not going to pay me overtime." Medina subsequently prepared a CD. To his knowledge, the CD was never adjudicated.

Medina and Respondent were in the same Police Academy class. They worked together at PSA 3 for approximately four-and-a-half years, but they only saw each other in passing because they worked different tours. They were friendly when they saw each other but did not socialize outside of work. The February 26, 2011, incident was the only time that Medina had a problem with Respondent.

On cross-examination, Medina testified that he thought Respondent needed help with the roll call because of the way that she was flipping back and forth through the pages. He did not recall ever seeing officers behave that way with the roll call before. He had assisted other police officers with the roll call in the past. Respondent did not ask for help. Medina was not aware that there were allegations made at PSA 3 that officers were stealing time and that supervisors were signing them out. There was no information on the roll call that Medina was concerned about Respondent seeing.

Medina found it unusual that Respondent had called him a jackass. He neither spoke to the platoon commander about the incident nor called the duty captain to the scene, as he was not looking to have Respondent suspended. He did not make any Activity Log entries with respect to the incident. He prepared the CD on the day of the incident. Although he spoke with Mosca about the encounter before deciding to issue a CD, the decision to issue the CD was his own. He could not recall if he spoke to Curry about the matter.

On redirect examination, Medina confirmed that one of his concerns was that the roll call might get lost or stepped on. As the Desk Officer, he was responsible for the roll call throughout the course of his tour. Medina hoped to resolve the matter by speaking with Respondent before she left for the day, but Respondent refused to speak with him.

On recross-examination, Medina explained that he was concerned that the roll call might get lost while it was in Respondent's hands because "sometimes people accidentally forget that things are in their hand they might accidentally walk away with it. I wanted to make sure the roll call stayed where it was so that it didn't end up on the floor. Things accidentally get lost, and that is just what I'm trying to prevent." When

Medina works as the Desk Officer, he watches as police officers sign out on the roll call to ensure “that everybody is doing what they’re supposed to do.”

Sergeant Kurt Duncan

Duncan, a 19-year member of the Department, is currently assigned to the Patrol Borough Brooklyn North Investigations Unit. While on patrol on November 19, 2010, he observed a male police officer asleep inside a marked Department vehicle that was parked in front of a deli. Duncan then observed Respondent standing inside the deli. She was in uniform but she was not wearing her uniform hat. He continued to observe Respondent who remained inside the deli for five to ten minutes. As Respondent exited the deli, Duncan approached her, identified himself and asked to see her Activity Log. When he asked Respondent why she was not wearing her uniform hat, she indicated that her hat was inside the car. Duncan stated that it is Department policy that officers wear their hats whenever they are in public view or not inside a Department vehicle. Respondent was issued a Schedule “A” CD for her failure to wear her uniform hat that day. To Duncan’s knowledge, the CD was never adjudicated.

On cross-examination, Duncan confirmed that this was not the first time that he had observed a police officer not wearing a uniform hat. Duncan further confirmed that the officer who was observed sleeping inside the Department vehicle was also issued a CD.

Respondent’s Case

Respondent testified in her own behalf.

Respondent

Respondent testified, with regard to Specification No. 1, that on March 25, 2010, she received a notification to report to the Outdoor Range to pick up her vest. The notification did not have a date on it. She was driving the PSA 3 platoon commander, Lieutenant Platt, that day. Platt looked at the notification and asked her when she would be going to the range. Respondent replied, "I guess I'll go tomorrow because it doesn't have no date." Platt did not post change Respondent to go to the range or direct her to report there. Respondent was wearing a vest that day. The vest that was waiting for her at the range was an upgraded one.

With regard to Specification No. 2, Respondent recalled that on June 30, 2010, she approached Carter that day about a DMV notification. She described the notification as "a letter that I received straight to the PSA 3, that they wanted me to report on my regular day off." The notification, which Respondent asserted was addressed to the command, concerned a Driving While Intoxicated arrest that Respondent had made. After Respondent entered the roll call office, Scott directed her to speak with Carter about the matter. Carter was on the telephone at the time. Respondent asserted that because Carter rolled "her eyes back" in an expression that looked "really nasty" she "just threw the notification in the basket that was on the corner of her desk." Respondent was standing two or three feet away from the basket at the time. Respondent told Carter, "Do your job if you want." Carter did not respond. Respondent then left the roll call office. With regard to Specification No. 3, Respondent testified that she had no

recollection of having a conversation with Alli the next day near the front desk or how she got the DMV letter back.

With regard to Specification No. 4, Respondent recalled that while she was performing patrol duties on November 19, 2010, she was not wearing her uniform hat when a lieutenant inspected her Activity Log and told her that she was going to receive a CD for failing to wear her hat. She received the CD about a month later. She asserted that "they didn't even give me an official paper or notify me properly."

With regard to Specification No. 5, on December 26, 2010, Respondent and Kikirov took possession of a vehicle after a car stop. As the recorder that tour, she was responsible for vouchering the vehicle, but Kikirov assisted her with the process. Kikirov collected all of the property that was inside the car. Because Kikirov replied affirmatively when Respondent asked him if he had checked the trunk, Respondent never checked the trunk herself. A Sergeant subsequently informed her that a lot of personal property had been left in the trunk and needed to be vouchered. He did not say that the property needed to be vouchered immediately. The property consisted of compact discs, perfume, and other small items of personal property. That same morning, Respondent spoke with Deroia about the matter. Deroia offered to prepare the invoice for her, but Respondent told him that she would do it herself later. When she came back to work the next day, Deroia had already vouchered the property. Respondent did not hear anything further about the matter until she was served with charges.

With regard to Specification No. 6, Respondent asserted that although Department policy requires officers to inspect the vehicles that they are assigned for any damage, officers only look at the gas level and for "any big damage" to the inside or outside of the

car. Respondent asserted that it is not unusual to see damaged Department cars and that she has been assigned a damaged car many times. When she returned to the command to transport prisoners on February 19, 2011, she informed Mosca that the mirror on the car that she was driving was loose. The mirror seemed to be attached to the car by duct tape. The damage seemed recent, as the tape was in good condition. Mosca told Respondent that he would take a look at it. After she left that day, Mosca called Respondent to tell her that he was preparing a Department memorandum about the damage because "they were giving him a hard time." Respondent asserted that although patrol supervisors are supposed to inspect vehicles at the start of tour, in actuality they never perform this task. Mosca, who was the patrol supervisor that day, did not inspect Respondent's car at the start of her tour.

With regard to Specification No. 7, Respondent recalled that she has known Medina since 1998. She described their relationship as follows: "Usually he comes, jokes around with me all the time and always bothering me about some pictures." She explained that Medina always made fun of her because of photographs that they had taken while they were in field training together. Medina was standing nearby when she went to sign out on the roll call on February 26, 2011. While she was looking for her name on the roll call, Medina laughed and asked her if she needed help. Respondent told him, "You never ask me for help, why now?" Medina replied that he did not want the roll call to disappear. At that point, Respondent told him to stop harassing her and to mind his own business. Medina continued laughing and said, "Okay." Respondent then told Medina to have a good day and proceeded downstairs to change out of uniform. Respondent denied ever telling Medina that he was acting like a "jackass."

When Respondent returned upstairs, Medina's demeanor was totally changed. Medina told her that he wanted to speak with her and she replied that her tour was over and she was leaving unless he paid her overtime. Medina told her that she was being rude. Respondent found Medina's demeanor at that point strange because he was usually joking around. After Respondent turned to go, Mosca took her aside, told her that she was hard on Medina, and asked what was going on. Respondent told Mosca that Medina was always harassing her and that the matter was just between Medina and herself. Mosca said, "Okay." Respondent testified that when she spoke about Medina harassing her she was referring to his "joking around" and saying that he wanted "to show those pictures to everybody else." After leaving the command that day, she did not hear anything further about the encounter.

On cross-examination, Respondent testified that although she received the notification from Curry on March 25, 2010, it was not Curry who wrote the notification. She explained that notifications are usually written by members assigned to the administrative office. She did not follow up with the administrative office for clarification because her tour ended at 7:50 a.m., and members in the administrative office did not start work until after that time. Respondent explained that she indicated on the notification that she had already been to the range because she mistakenly believed that the purpose of the notification was for her to qualify with her firearm, which is something she had already done. Respondent went to the range to upgrade her vest the next day.

Respondent testified that she did not receive the DMV letter at her residence. Respondent asserted that the DMV letter was addressed to PSA 3 and that is where she



received it. Respondent agreed that she could have walked up to the basket on Carter's desk and placed the letter in the basket. When she was asked why she tossed the letter into the basket, she explained that because Carter "was on the phone, I was waiting for her to finish, but the way she look at me really nasty and roll her eyes back, so it makes me feel not get closer to her." Respondent agreed that Carter had been on the phone for less than a minute before Respondent threw the letter in the basket.

Respondent signed the Property Clerk Invoices regarding the property recovered from inside the Cadillac by Kikirov. When Deroia approached her about the matter, he told her that the vehicle could not be processed because property had been left inside the vehicle. She explained to Deroia that she had trusted Kikirov when he told her that all of the property had been removed from the car. Although Respondent conducted an inspection of the front and rear seats of the vehicle, she could not recall if she had looked inside the console and the glove compartment. She had asked Kikirov to look inside the trunk.

Respondent conceded that she was notified three times that there was an issue regarding property left inside the vehicle. In addition to her conversations with Deroia and a sergeant, she received a notification slip about the property. After her conversation with Deroia, she did not go out to the car because she did not have keys for the vehicle. Deroia had the keys at the time. Respondent conceded that she never asked him for the keys. After her conversation with the sergeant, she did not go out to the car because it was near the end of her tour. By the time she returned for her next scheduled tour, Deroia had already removed and vouchered the property.

Respondent conceded that as the operator of the Department vehicle on February 19, 2011, it was her responsibility to inspect the car prior to going out on patrol and to document any damage that she noticed in her Activity Log. Although she inspected the car and documented damage that she saw, she did not document the duct-taped mirror because "it's so common to see duct tape" on Department vehicles that "it seems like nobody cares." She agreed that she should have immediately notified a supervisor about the mirror, but she chose not to do so because that type of damage is so common.

When Medina told her on February 26, 2011, that she had been rude to him, she was unsure whether he was being serious.

On redirect examination, Respondent testified that Medina barely spoke to her after the February 26, 2011, incident. Medina never brought up the incident again. Regarding the March 25, 2010, notification, Respondent reiterated that she discussed the notification with the platoon commander that day. Respondent asserted that she was joking when she told Medina on February 26, 2011, that he was harassing her and that he should mind his own business.

### FINDINGS AND ANALYSIS

#### Specification No. 1

It is charged that on or about March 25, 2010, after Respondent was notified of a post change directing her to report to the Outdoor Range, she failed to do so.

Beneventano did not write on the notification that Respondent received that the post change to the outdoor range was to occur on March 25, 2010 (DX 1). Beneventano asserted that there was no need for him to write on the notification that the post change

was to take place on March 25, 2010, because when an officer receives a post change it is understood that the change is for that same day.

However, Beneventano's assertion is belied by his admission that Platt had told him that due to the absence of a date on the notification, Platt himself was confused as to what day Respondent was supposed to report to the range. Moreover, Beneventano conceded that he issued a CD to Respondent even though he never asked Respondent if she had reported to the range to upgrade her vest the next day, March 26, 2010. The Department did not refute Respondent's claim that she reported to the range on March 26, 2010.

Finally, Beneventano conceded that if Respondent was confused about whether she was supposed to report to the range on March 25, 2010, it would have been correct for her to go there the following day, as she did.

Since the Department did not meet its burden of proof regarding this charge, Respondent is found Not Guilty of Specification No. 1.

#### Specification Nos. 2 and 3

It is charged that on June 30, 2010, Respondent was discourteous to Carter in that she threw an envelope on Carter's desk and stated, "I don't have time for this," and it is charged that on July 1, 2010, Respondent was discourteous to Alli in that after Alli handed this envelope back to her, she told him in an elevated voice, "I'm end of tour. I don't have anything to do with this. Don't give me other people's work to do."

These two Specifications both involve a DMV appearance notification regarding a police action that Respondent took while on duty. Although Respondent testified that she

had received this DMV appearance notification via her command, I credit Carter's and Scott's testimony that the address on the envelope was not the address for PSA 3.

Although I find that Respondent was understandably annoyed that DMV had mailed a court appearance notice to her requesting that she appear in court on a day that was her RDO, Respondent had no right to take out her annoyance at DMV on Carter. I credit Scott's testimony that because Carter was on the telephone, an impatient Respondent tossed the notification into a basket on Carter's desk, stated "I don't have time for this shit," and walked away. Respondent admitted that she told Carter, "Do your job if you want." Since Carter is a civilian supervisor, Respondent was obligated to speak to her in a courteous manner. Respondent's comments were unprofessional and discourteous. Thus, Respondent is found Guilty of Specification No. 2.

Respondent walked out of the roll call office on June 30, 2010, without having explained to either Scott or Carter that the letter inside the envelope involved a court appearance notification regarding a police action, not a personal matter. Respondent's failure to clearly communicate this to either Carter or Scott, and their reticence to open an envelope that appeared to them to involve a personal matter, led to mutual confusion which resulted in an unnecessary encounter between Respondent and Alli the next day.

It is clear that when Alli handed the envelope back to Respondent, she mistakenly believed that he had read its contents and that he was aware it involved a notice that she appear in court on her RDO to testify regarding a police action she had taken while on duty. That explains why Respondent expressed to Alli that what he was handing back to her should have been handled by the roll call office.

It was the manner in which a frustrated Respondent expressed this to Alli that constitutes misconduct. Alli's testimony that Respondent spoke to him in a discourteous manner was corroborated by Mulero who testified that she heard Respondent tell Alli, in a harsh and sarcastic voice, that he should "not give her his work or the work of the people in the back to do" and that he should "do his own work." Alli held a civilian rank equivalent to the uniform rank of lieutenant. Thus, Respondent was under a duty to address him in a courteous manner. Since she failed to do so, Respondent is found Guilty of Specification No. 3.

#### Specification No. 4

It is charged that while Respondent was on duty on November 19, 2010, she failed to wear her uniform hat, as required. Respondent corroborated Sergeant Duncan's testimony that at one point that day while she was standing outside her RMP while performing patrol duties, she was not wearing her uniform hat.

Respondent is found Guilty of Specification No. 4.

#### Specification No. 5

It is charged that while Respondent was on duty on December 26, 2010, she failed to properly voucher several items located inside a vehicle she had taken into custody. Since Respondent and her partner, Kikirov, jointly searched the Cadillac they had taken into custody and since Respondent signed the vouchers that her partner had prepared, she was responsible for the accuracy of these Property Clerk Invoices. I credit Deroia's testimony that he observed an additional 35 items of property inside the vehicle that

should have been vouchered. His claim that he found and personally vouchered these items is corroborated by Property Clerk Invoices he prepared (DX 4).

Respondent is found Guilty of Specification No. 5.

#### Specification No. 6

It is charged that while Respondent was on duty on February 19, 2011, she failed to observe and report damage to her assigned RMP in a timely fashion in that although she began her tour at 2315 hours, she did not report damage to her RMP until 0253 hours and she failed to note this damage in her Activity Log as she was required to do.

Respondent admitted that the Department car she was assigned on February 19, 2011, had damage in that a mirror appeared to be attached to the car only by duct tape and that the damage appeared to have been caused recently because the tape was in good condition. Respondent further admitted that she did not report this damage to her supervisor until later in her tour when she returned to the command.

Respondent is found Guilty of Specification No. 6.

#### Specification No. 7

It is charged that while Respondent was on duty on February 26, 2011, she was discourteous to Sergeant Medina in that she told him, in substance, "STOP HARASSING ME MIND YOUR OWN BUSINESS YOU'RE ACTING LIKE A JACKASS."

Although Respondent admitted that she told Medina, "Stop harassing me and mind your own business," she denied that she had called him a "jackass." I find Respondent Guilty of calling him a "jackass" because Medina's testimony that

Respondent told him, "You're acting like a jackass," was corroborated by Mulero who testified that he heard Respondent tell Medina, "You're just being a jackass." Although Mosca, Respondent's supervisor, recalled that Respondent's remark to Medina sounded to him more like, "Don't be a smart ass," it is, nonetheless, clear that Mosca believed that Respondent had been discourteous to Medina because Mosca took her aside and told her that she had embarrassed him by what she had just said to a fellow sergeant.

I reject Respondent's claim that her remark to Medina constituted jesting-type humor and that Medina laughed at her comments. Respondent's claim was not supported by Mulero or Mosca. Mulero testified that Respondent uttered her discourteous remarks to Medina in a loud, sarcastic voice, and Mosca, who as Respondent's supervisor was very familiar with her verbal mannerisms, testified that her remark to Medina did not sound like jesting to him. Moreover, Respondent admitted that when Medina asked her to stay because he wanted to speak to her, she told him that she would only stay if he authorized overtime for her, and that when he told her that she had been very rude to him, he appeared to be upset. Respondent is found Guilty of Specification No. 7.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 1998. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum

The misconduct Respondent has been found guilty of under Specification Nos. 4 and 6, constitutes relatively minor misconduct that is normally dealt with at the command level via command discipline.

With regard to Specification No. 5, Respondent compounded her initial failure to insure that all items had been removed from the Cadillac and entered on the vouchers she signed by ignoring Deroia's oral request that she return to the vehicle and remove the items he had observed inside the vehicle, and then by ignoring the written notification that Deroia prepared at Beneventano's direction. As a result of Respondent's failure to voucher the property that still remained in the car, Deroia had to personally voucher the property so that the car could be impounded. Moreover, although the charge alleges that Respondent failed to voucher "several items," Deroia's vouchers (DX 4) show that he had to voucher an additional 35 items. Since Kikirov received a CD for improper vouchering and forfeited three vacation days, Respondent failure to remove these 35 items from the Cadillac in spite of Deroia's notifications merits a higher penalty.

The misconduct Respondent has been found guilty of under Specification Nos. 2, 3 and 7 constitutes serious misconduct.

Under Specification Nos. 2 and 3, Respondent has been found guilty of addressing two civilian supervisors in a discourteous manner. Respondent's profane comment to Carter was made in the presence of a PAA who reported to Carter. Respondent's discourteous comments to Alli were made in the vicinity of the front desk within earshot of an officer.

Under Specification No. 7, Respondent has been found guilty of addressing Sergeant Medina in a discourteous manner when she told him to mind his own business



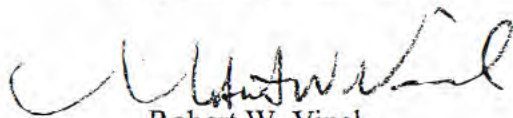
and called him a "jackass." Her "jackass" remark was overheard by Mulero who testified that Respondent had addressed Medina in a loud, sarcastic voice. Also, Medina told her that she had been rude to him and her supervisor, Mosca, was so upset by her behavior that he took her aside and told her that she had just embarrassed him by what she had said to a fellow sergeant.

The Assistant Department Advocate recommended that Respondent be suspended for ten days and also that she forfeit 20 vacations days for a total loss of 30 days.

Although Respondent has no formal disciplinary record, I believe that the penalty should include a period on Dismissal Probation as a warning that any further discourteous conduct could result in her immediate dismissal from the Department.

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14 115(d) of the NYC Administrative Code for a period of one year, during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing. It is further recommended that Respondent forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner Trials

**APPROVED**



APR 01 2012  
RAYMOND W. KELLY  
POLICE COMMISSIONER

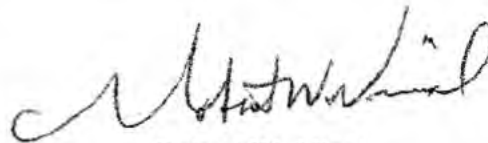
POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER ALEJANDR VARGAS  
TAX REGISTRY NO. 921829  
DISCIPLINARY CASE NO. 2011-4721

The Respondent received an overall rating of 4.0 on her 2012 performance evaluation, 4.0 on her 2011 evaluation, and 3.5 on her 2009 evaluation. She has no medals. [REDACTED]

She has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner – Trials